U.S. Department of Justice

Immigration and Naturalization Service

[redacted]

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: EAC-98-070-50543 Office: Vermont Service Center Date: JUN 9 2000

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER: Self-represented

Public Copy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(4), to serve as a minister. The director denied the petition determining that the petitioner had failed to establish that the prospective occupation is a religious occupation or that the beneficiary had two years of continuous religious work experience. The director also found that the petitioner had failed to establish that it had made a valid job offer, or that it has the ability to pay the proffered wage.

On appeal, the petitioner argues that the beneficiary is eligible for the benefit sought.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

> (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
>
> (ii) seeks to enter the United States--
>
> (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
>
> (II) before October 1, 2000, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
>
> (III) before October 1, 2000, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and
>
> (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The beneficiary is a thirty-year-old single male native and citizen of Trinidad. The beneficiary completed a Form G-325A, Biographic Information, on February 2, 1998. According to this document, the beneficiary has been residing in the United States since August 1989. The petitioner indicated that the beneficiary had never worked in the United States without permission.

The first issue to be examined is whether the prospective occupation is a religious occupation.

8 C.F.R. 204.5(m)(2) states, in pertinent part, that:

> *Religious occupation* means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

The regulation does not define the term "traditional religious function" and instead provides only a brief list of examples. The examples listed reflect that not all employees of a religious organization are considered to be engaged in a religious occupation. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed of the denomination. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative, humanitarian, or secular. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

The Service therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

In its letter dated March 3, 1998, the petitioner lists the beneficiary's duties as follows:

> Spiritual Counseling personal/professional development of youth . . . Spiritual Leadership in religion . . . Teaching christian principles . . . Spiritual assisting and help planning of development of programs . . . Mid week spiritual counseling for wayward individuals . . . [The beneficiary] has authorization to conduct religious worship and perform all duties usually performed by authorized member of the clergy.

The petitioner submits a photocopy of a certificate of ordination issued by it to the beneficiary on June 28, 1996.

On appeal, the petitioner states that the beneficiary "will be employed in full time position in a Religious Vocation." The petitioner has not demonstrated that the prospective occupation is a religious occupation. The petitioner has neither asserted nor documented that the beneficiary needed to undergo any theological education or specific religious training to qualify for the position of minister. Moreover, the petitioner did not disclose what, if any, training the beneficiary completed prior to receiving his certificate of ordination. The simple issuance of a document entitled "certificate of ordination," which is not based on specific theological training or education, does not prove that an alien is qualified to perform the duties of a minister or pastor. See Matter of Rhee, 16 I&N Dec. 607, 610 (BIA 1978). Based on the list of duties described by the petitioner, it appears that any devout member of the denomination would be able to work as a minister. Accordingly, the prospective occupation is not a religious occupation.

The next issue to be examined is whether the petitioner has established that the beneficiary had two years of continuous work experience in the proffered position.

8 C.F.R. 204.5(m)(1) states, in pertinent part, that:

> All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on January 5, 1998. Therefore, the petitioner must establish that the beneficiary had been continuously working in the prospective occupation for at least the two years from January 5, 1996 to January 5, 1998.

In its letter dated March 3, 1998, the petitioner states that the beneficiary has the "required two years experience in the religious vocation 35 hours per week/became Religious Worker/Minister 02/94

to present . . . There has been no volunteer basic." The petitioner submitted a Form G-325A, Biographic Information, completed by the beneficiary on February 2, 1998. The beneficiary did not list any employment during the five years preceding the form's completion. On appeal, the petitioner states that the beneficiary "is satisfied the necessary requirements mandated by the INS to qualify the beneficiary as a Religious Worker."

In order to qualify for special immigrant classification in a religious occupation, the job offer for a lay employee of a religious organization must show that he or she will be employed in the conventional sense of full-time salaried employment. See 8 C.F.R. 204.5(m)(4). Therefore, the prior work experience must have been full-time salaried employment in order to qualify as well. The absence of specific statutory language requiring that the two years of work experience be conventional full-time paid employment does not imply, in the case of religious occupations, that any form of intermittent, part-time, or volunteer activity constitutes continuous work experience in such an occupation. The petitioner claims that the beneficiary's services at the church during the two-year period prior to filing were not performed on a voluntary basis. The petitioner has not stated what the beneficiary's remuneration was or whether his services were on a full-time basis. Further, on the Form G-325A, the beneficiary did not list any occupation during the qualifying period.

The petitioner has not established that the beneficiary was continuously engaged in a religious occupation from January 5, 1996 to January 5, 1998. The objection of the director has not been overcome on appeal. Accordingly, the petition may not be approved.

The next issue in the director's decision is whether the petitioner has made a valid job offer.

8 C.F.R. 204.5(m)(4) states, in pertinent part, that:

> *Job offer.* The letter from the authorized official of the religious organization in the United States must also state how the alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration), or how the alien will be paid or remunerated if the alien will work in a professional religious capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or solicitation of funds for support.

In its letter dated March 3, 1998, the petitioner stated that the beneficiary "will be paid by district and position - food, shelter, clothing and upon approval will be placed upon benefit and

privilege salary of $6.50 per hour but more when produce other religious service which donations are given to Faith Restoration Center." The petitioner submitted an "immigrant employment contract" signed by the petitioner and the beneficiary.

On appeal, the petitioner reasserts that the beneficiary will be employed on a full-time basis. As was previously discussed, the petitioner has not established that the beneficiary has been working on a full-time, salaried basis in the past. Further, the petitioner has not established that the beneficiary's prospective occupation would either necessitate or warrant full-time employment. As such, it cannot be concluded that the petitioner has met the requirements at 8 C.F.R. 204.5(m)(4).

The next issue in the director's decision is whether the petitioner has the ability to pay the proffered wage.

8 C.F.R. 204.5(g)(2) states, in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage . . . Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner has indicated that it will pay the beneficiary an hourly salary of $6.50. The petitioner has submitted photocopies of self-prepared financial statements and budgets. The evidence submitted in support of this petition is not sufficient. 8 C.F.R. 204.5(g)(2) provides a list of documents that may be submitted to support a petitioner's claim to be able to pay a wage. The petitioner has not submitted any of these documents. Accordingly, the petitioner has not established its ability to pay the proffered wage in accordance with 8 C.F.R. 204.5(g)(2).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.